

# CITIES AND TOWNS BULLETIN

## AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

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September 2008

### **JUNE TRAINING SCHOOL**

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and handling the registration at the school in Evansville. Next year's June school will be held in French Lick as part of the League's Annual Conference during the week of June 14 through June 18. Please note that this year's League's Fall District meetings will qualify as State-Called meeting days. This year's meetings will be in Middlebury on October 9 and in Nashville on October 29.

### **INVESTMENT OF CITY AND TOWN COURT FUNDS**

The State's portion of court costs, along with the State fees sent directly to the Auditor of State, may be invested by the Court Clerk while awaiting transmittal to the State.

The interest earned should be receipted to the city or town general fund.

### **COMPENSATION – EMPLOYEE TIME OFF FOR JURY DUTY OR AS SUBPOENAED WITNESS**

Since there are not any statutory references applying to these situations, the following is the audit position of the State Board of Accounts. Any of the following procedures would be acceptable:

1. The employee could receive the full amount of his/her regular salary and not claim compensation for serving as a juror or a witness.
2. The employee could receive the compensation for serving as a juror or witness and the amount received (excluding mileage reimbursement) could be deducted from his/her regular salary.
3. The employee could receive the full amount of his/her regular salary and then, in turn, turn over the warrant received for serving as a juror or witness to the proper fiscal officer. The fiscal officer would receipt the warrant into the fund from which the regular salary was paid. This procedure would not permit the appropriation to be increased by the amount of the receipt. (This procedure will not be possible if any mileage reimbursement is included in the warrant.)

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## **DEFERRED COMPENSATION PLANS**

A city or town may:

- (1) agree with any employee to reduce and defer any portion of such employee's compensation which under federal law may be deferred under a nonqualified deferred compensation plan and subsequently contract for, purchase, or otherwise procure insurance and investment products appropriate for a nonqualified deferred compensation plan (all referred to in IC 5-10-1.1 as "funding"), for the purpose of funding a deferred compensation plan for such employee; and
- (2) contribute amounts before January 1, 1995, and continue or begin to contribute amounts after January 1, 1995, to a nonqualified deferred compensation plan on behalf of eligible employees, subject to any limits and provisions under Section 457 of the Internal Revenue Code.

## **VOLUNTEER FIREFIGHTERS INSURANCE COVERAGE**

Under the provisions of IC 36-8-12, local governmental units that have volunteer fire departments are required to provide coverage for each member of the department. However, the question of whether or not the governmental unit is required to pay for such coverage directly to the insurance carrier is controlled by the contractual arrangement between the unit and the volunteer fire company. Whether or not individual firefighters are liable for payment of premiums for such coverage can only be determined on a case by case basis based on the contract in force. Therefore, individual volunteer firefighters should not procure individual insurance without first checking as to the status of the contractual relationship with the unit. If such payment is made by volunteer firefighters and is not authorized, it may not be subject to reimbursement by the unit. We find nothing that statutorily restricts the availability of this insurance coverage to one particular agent or company.

## **SPECIAL DEATH BENEFIT FUND – PUBLIC SAFETY OFFICERS**

A Special Death Benefit Fund is maintained by the State for the purpose of paying a lump sum death benefit of one hundred fifty thousand dollars (\$150,000) to the surviving spouse, or, if there is no surviving spouse, to the surviving children of a public safety officer who dies in the line of duty.

The term "Public Safety Officer" includes a city police reserve officer, town marshal, deputy town marshal, a probation officer, certain emergency medical service providers, and an eligible chaplain of a police or fire department.

The Special Death Benefit Fund consists of special death benefit fees collected by county, city, and town courts. (IC 5-10-10)

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## **CLERK-TREASURER'S NOTARY POWERS**

Notaries public, judges of courts, in their respective jurisdictions, mayors, clerks and clerk-treasurers of towns and cities, in their respective towns and cities, clerks of circuit courts, master commissioners, in their respective counties, judges of United States district courts of Indiana, in their respective jurisdictions, and United States commissioners appointed for any United States district court of Indiana, in their respective jurisdictions, are authorized to administer oaths and take acknowledgments generally, pertaining to all matters where an oath is required.

Since it appears IC 33-42-4-1 grants clerks and clerk-treasurers virtually identical powers and authority as notaries public in matters involving acknowledgments and oaths, there would be no need for a clerk or clerk-treasurer to qualify as a notary public.

## **DIPHTHERIA, TETANUS, AND RABIES VACCINES**

IC 16-41-19-2 requires all cities and towns to supply without charge diphtheria, scarlet fever, and tetanus (lockjaw) antitoxin and rabies vaccine to persons financially unable to purchase the antitoxin or vaccine, upon the application of a licensed physician.

All costs that are incurred in furnishing the aforementioned antitoxin or vaccines shall be paid by the appropriate city or town against which a physician's application form is issued from general funds not otherwise appropriated without appropriation.

An Application and Claim for Biologist, State Form No. 43918, will be filed by the physician with the city or town fiscal officer if such antitoxins or vaccines are supplied.

## **RATES AND CHARGES – MUNICIPAL UTILITIES**

IC 8-1.5-3-8 (water, gas, and electric utilities) and IC 36-9-23-25 (wastewater utilities) require utility rates and charges to produce sufficient revenue to pay all of the expenses incident to the operation of the utility, including maintenance, operating charges, repairs, depreciation, and interest charges on bonds or other obligations. Such rates should also provide money to be used as working capital and provide adequate money for making extensions and replacements. IC 8-1.5-3-8(d) states that rates and charges too low to meet these requirements are unlawful.

Each city and town that owns and operates municipal utilities should review the utilities' rates and charges to ensure sufficient revenues are generated to satisfy the requirements of the laws. General Fund moneys or other similar city and town funds should not be used for the operation, maintenance, and other expenses of a municipally owned utility.

## **ACCIDENT RESPONSE SERVICE FEES – PROHIBITION OF**

IC 9-29-11.5 states that a city or town's law enforcement agency may not impose or collect, or enter into a contract for the collection of, an accident response service fee from the driver of a motor vehicle or any other person involved in a motor vehicle accident.

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## **OFFICIAL BONDS, EMPLOYEE BLANKET BONDS AND CRIME INSURANCE POLICIES - FILING**

All official bonds, employee blanket bonds, and crime insurance policies which are required to be obtained under IC 5-4-1-18 shall be filed in the office of the County Recorder.

## **INSPECTOR OF WEIGHTS AND MEASURES**

IC 36-8-2-12 allows cities and towns to establish, maintain, and operate a weights and measures standards control system. However, a city or town may not establish fees for inspections and tests relating to weights and measures.

The legislative body of a city having a population of at least twenty thousand (20,000) may provide for the appointment by the board of public safety of an inspector of weights and measures and provide for the inspector's compensation and for the necessary apparatus and expenses to be paid out of the city treasury. The inspector of weights and measures shall serve continuously during good behavior under the provisions of IC 36-8-3-4 governing the fire and police force. The inspector of weights and measures shall not be removed for any political reason and only for good and sufficient cause after an opportunity for hearing is given by the board of public safety. However, this does not affect the power of the division of weights and measures of the state department of health to discharge county or city inspectors of weights and measures under IC 24-6-3-6.

A person may not be appointed as a city inspector of weights and measures unless the person is approved by the division of weights and measures. A city inspector of weights and measures may not be removed without the approval and consent of the state division of weights and measures.

The same person may be employed as a city and county inspector of weights and measures. If the same person is so employed, the compensation and expenses of the inspector shall be divided between the city and county, as agreed upon under IC 36-1-7.

If a city having a population of at least twenty thousand (20,000) does not provide for the appointment of an inspector of weights and measures, the executive of the county containing the city shall require the county inspector of weights and measures to perform those duties for that city. (IC 24-6-3-5)

The county or city inspector of weights and measures when appointed shall be a deputy inspector under the direction of the state division of weights and measures. The inspector shall take charge of and safely keep the county or city standards. When not otherwise provided by law, the county or city inspector of weights and measures shall have the power within the county or city to inspect, test, try and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measurement and the tools, appliances or accessories, connected with any or all such instruments or measurements used or employed within the county or city by any proprietor, agent, lessee or employee in determining the size, quantity, extent or measurement of quantities, things, produce, [and] articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award. The inspector shall at least once in each year and as much oftener as he may deem necessary see

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## **INSPECTOR OF WEIGHTS AND MEASURES – (Continued)**

that the weights measures and all apparatus used in the county or city are correct. The county or city inspector of weights and measures shall keep a complete record of the work done by the inspector and shall make a monthly and annual report to the division and the board of county commissioners or to the mayor. The annual report shall be duly sworn and submitted to the division of weights and measures, not later than the fifteenth of October. Upon appointment, the county or city inspector of weights and measures shall, in the manner prescribed by IC 5-4-1, give a bond for the faithful performance of the duties of the office. The county inspector of weights and measures shall have jurisdiction over the whole county except as to incorporated cities which have provided for a city inspector of weights and measures. (IC 24-6-3-5)

## **LOCAL OPTION INCOME TAX (LOIT) – PUBLIC SAFETY**

IC 6-3.5-1.1 allows for the adoption of local option income taxes to offset the effects of the circuit breaker caps. A LOIT tax of up to .25% may be adopted for public safety costs. IC 6-3.5-1.1-25 states that tax revenue distributed to a city or town must be deposited in a separate account or fund and may be appropriated by a city or town only for public safety costs. Those cities and towns that deposit such distribution in a separate fund would deposit the money into Fund No. 249, LOIT – Public Safety.

## **COUNTY SLOT MACHINE WAGERING FEES**

In those counties (Madison and Shelby) with slot machine wagering at racetracks, a county slot machine wagering fee shall be collected by the State and distributed to each city or town in such counties by the County Auditor. IC 4-35-8.5-4 requires such distributions to be deposited in the city or town's general fund.

## **POLITICAL AND PERSONAL EXPENDITURES PROHIBITED**

Governmental funds and assets should not be used in a manner unrelated to the functions and purposes of the governmental unit. This prohibition includes expenditures for political purposes, contributions to political campaigns, directly or indirectly which are not authorized by statute. Public funds used for political or personal reasons shall be the personal obligation of the responsible official or employee.

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**QUESTIONS AND ANSWERS FROM THE JUNE 2008 CITIES AND TOWNS  
TRAINING SCHOOL**

Question #1: If a City/Town has five million dollars (\$5,000,000) in various CD's (invested) at one local bank, is this protected by FDIC and how does this work?

Answer #1: The Public Deposit Insurance Fund (PDIF) covers all amounts deposited and/or invested in State approved depositories in excess of one hundred thousand dollars (\$100,000).

Question #2: Is anyone responsible for mowing weeds on properties in an abandoned subdivision in an area not owned by city/town?

Answer #2: IC 36-7-10.1 would allow a county, if it adopted a weed removal ordinance, to enforce the removal of weeds or rank vegetation on properties outside city or town limits.

Question #3: Can internet charges on hotel bill be included in travel policy for cities and towns? Would that be an allowable expense?

Answer #3: Yes. However, we recommend such policy state that the internet will be used for business purposes only.

Question #4: How much should you charge to burn a CD of meeting minutes?

Answer #4: IC 5-14-3-8 states that you may not charge more than the actual cost of providing copies. Actual cost may not include labor and overhead charges.

Question #5: Council wants access to utility billing, are there any privacy issues?

Answer #5: Yes. IC 5-14-3-4 allows a city or town to exempt the telephone number, address, and social security numbers of utility customers if it chooses to do so.

Question #6: Can the Water Board allow for customers to pay their utility bills by credit cards or online?

Answer #6: IC 36-1-8-11 allows for the board of a municipally owned utility to authorize payment by bank card or credit card, electronic fund transfer, or any other financial instrument authorized by the fiscal body. Such authorization should be made by ordinance or resolution.

Question #7: Can a town police department sell excess equipment on e-bay?

Answer #7: Yes. IC 5-22-22-4.5 allows cities and towns to sell personal property via the internet on a site approved by the Indiana Department of Administration and administered by the Indiana Office of Technology. It is our understanding that e-bay is an approved site.

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**QUESTIONS AND ANSWERS FROM THE JUNE 2008 CITIES AND TOWNS  
TRAINING SCHOOL - (Continued)**

Question #8: Does the Council have the authority to remove the Clerk's Deputy staff even though there is sufficient appropriations available to pay the staff through the end of the year?

Answer #8: IC 36-4-11-4, IC 36-4-10-7 and IC 36-5-6-7 state that a clerk or clerk-treasurer's deputies serve at the clerk or clerk-treasurer's pleasure. However, IC 36-4-7-8 and IC 36-5-3-5 allow city and town councils to reduce appropriations.

Question #9: Can a county and a town impose a stormwater fee in the same area?

Answer #9: No. Public Law 114, Acts of 2008, prohibits a county and a city or town from imposing a stormwater fee to customers in the same area. A county stormwater board and a city or town stormwater board must adopt a memorandum of understanding that sets out which board will service an area.

Question #10: Can a trash hauler contracted by a town to haul trash raise his fees in the middle of the contract year to add a fuel adjustment fee?

Answer #10: We recommend the Town's Attorney be contacted to handle this matter. We are unaware of any provision in IC 36-9-30 that would allow for a contract awarded through the bid process required in IC 36-9-30-5 to be amended during the contract year.

Question #11: Can a city/town board provide food and refreshments for its members at schedule board meetings?

Answer #11: We do not recommend food and refreshments be provided to board members prior to board meetings. We would consider such fringe benefits to be personal expenses. Furthermore, the IRS has advised that such benefits could be held as taxable income to the board members.